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EXAMINER

ZIRKER, DANIEL R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/05/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-28 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-28 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2, 3
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit 1771

1. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-6, 9, 11, 12, 17, 18, 20-23, and 28 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, in claims 2, 21 and 28 applicant appears to use improper Markush language, i.e. it is suggested to delete "of adhesives" after the word "group". In claim 6 the Examiner is unfamiliar with the term "substantially congruent" in the manner applicant uses it, and in claims 17 and 18, line 2, after "of" add --the--.

3. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to contain a written description of the invention, and of the manner and process of making and using

Art Unit 1771

it, in such full, clear, concise and exact terms as to enable any person skilled in the art to make and use the invention. More particularly, applicant's specification, at page 2, lines 25-29 and particularly at page 3 lines 9-18 do not provide adequate guidelines in the Examiner's opinion as to just what constitutes a "permanent adhesive". Note that applicant's characterization at page 3, lines 10-13 of operable permanent adhesives (which is also reflected in claims 2, 21 and 28) essentially is believed to read upon just about any adhesive that exists, as well as additional fastening mechanisms such as chemical welding and mechanical fastening. As such, it is respectfully submitted that a prospective infringer has no guidelines as to indicate which sort of adhesives would not read upon applicant's disclosed and also claimed genus of adhesives.

5. Claims 2-5, 9, 11, 12, 16, 21-24 and 28 are rejected under 35 U.S.C. § 112, first paragraph as being based on a non-enabling disclosure.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

7. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit 1771

8. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 4-6, 9 and 11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Baum, Jr. et al. Note particularly the abstract, Figures 1-4, column 1 line 58-65, column 2 line 38 - column 3 line 10, column 3 lines 18-20, column 3 lines 46-50, column 4 lines 10-35. The disclosed resealable multiple layer label is believed to have both the same structure and also operate in the same manner in the embodiments relied upon by the Examiner as the claimed invention. Additionally, the adhesives utilized in the reference are believed to read upon the claimed "permanent adhesive material" utilized by applicant, or alternatively, be at most an obvious modification to one of ordinary skill.

10. Claims 3, ⁷7-8, 10, and 12-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Baum, Jr. et al. The reference is again relied upon substantially as set forth above,

Art Unit 1771

and with such parameters as the particular type of adhesive pattern and release adhesive location each believed to be obvious modifications to one of ordinary skill, as is the particular location of the release-reseal "system" utilized by applicant. With respect to claim 5 the location of the various adhesive layer margins and hinge location are believed to be well within the ordinary skill of the art, in the absence of unexpected results.

11. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 2, 4-6, 9 and 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over either Coward et al. or Hill et al. (Baker et al. is substantially cumulative). Note particularly Coward et al., the Abstract, Figures 1-3, column 1 lines 6-10, lines 26-34, line 44 - column 2 line 4, column 2 lines 9-15, lines 24-43, claims 1, 2 and 10; Hill et al., the Abstract, Figures 1-4, column 1 lines 5-15, column 2 lines 13-37, column 3 lines 13-45, column 4 lines 22-37, ^{which} disclose resealable layer structures that exhibit both base layers and upper ply layers being joined on one outer edge by a suitable hinge structure and further possessing the release resealable system formed from release and other conventional adhesives that applicant

Art Unit 1771

contemplates, or alternatively are most an obvious modification to one of ordinary skill in the art. With respect to those parameters that may not be either expressly or inherently disclosed or may be obvious modifications, these are again dealt with as set forth above in the paragraph dealing with the Baum, Jr. et al. reference.

13. Claims 3, ⁷ 5-8, 10 and 12-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over either Coward et al. or Baker et al. The references are again relied upon substantially as set forth above, with those parameters that are not believed to be either expressly or inherently disclosed handled in the identical manner as previously set forth above.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (703) 308-0031. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for this Group is (703) 872-9310.

Serial No. 10/099,669

-7-

Art Unit 1771

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Dzirker:cdc

June 2, 2003

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1900-

1700

Daniel Zinker